

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)

Mockingbird Gas Plant, LLC)

Monroeville, Monroe County, Alabama)

Air Facility ID No. 106-0021)

CONSENT ORDER NO. 09-XXX-CAP

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, “the Department”) and Mockingbird Gas Plant, LLC (hereinafter, the “Permittee”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 to 22-28-23 (2006 Rplc. Vol.) and the regulations promulgated pursuant thereto.

STIPULATIONS

1. The Permittee operates a natural gas processing plant (Air Facility ID No. 106-0021) in Monroeville, Monroe County, Alabama (hereinafter, “the Facility”).

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).

3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.).

4. The Permittee currently operates the Facility under the authority of Synthetic Minor Operating Permit Number 106-0021-X002 (hereinafter, “the Permit”).

5. Proviso 22(a) of the Permit states that “The 530 BHP refrigeration compressor engine shall be tested within six (6) months of the issuance of this permit.”

6. The Permit was issued to the Permittee, by the Department, on March 7, 2007.

7. On January 4, 2008, the Department contacted the Permittee to determine if the required testing for nitrogen oxide (NO_x) and carbon monoxide (CO) emissions had been conducted on the 530 HP natural gas refrigeration compressor engine and was informed that this unit had been replaced by an electric motor and testing was no longer required. The Department then requested that the Permittee submit a written statement acknowledging that the 530 HP natural gas refrigeration compressor engine had been replaced by an electric motor.

8. On January 30, 2008, the Permittee submitted a statement to the Department, via electronic mail, reiterating that the natural gas engine was replaced by an electric motor in May 2007.

9. On June 16, 2009, the Department conducted an inspection of the Facility and noted that the refrigeration compressor engine was natural gas fired.

10. On June 17, 2009, Permittee’s plant operator and operations officer confirmed with the Department that the refrigeration compressor engine located at the Facility was a natural gas fired unit. Both were asked by the Department to follow up and determine whether testing was conducted on the engine as required by the Permit.

11. On June 23, 2009, the Permittee informed the Department that it was unable to demonstrate that testing was conducted on the 530 HP natural gas refrigeration compressor engine and that it would contact the consultant for the Facility to have testing conducted as soon as possible.

12. On July 6, 2009, the Department issued a Notice of Violation (hereinafter, “NOV”) to the Permittee for failure to conduct performance testing for NO_x and CO emissions on the 530 HP natural gas refrigeration compressor engine within six months of the Permit issuance date of March 7, 2007.

13. Permittee responded to the July 6, 2009 NOV via letter dated August 3, 2009. The Permittee did not dispute the alleged violation cited in the July 6, 2009 NOV; however, it asserted that the violation was a result of several extenuating circumstances which have been corrected by replacing Facility personnel, hiring a consultant for compliance and permitting matters, and establishing sound record-keeping procedures.

14. ADEM Admin Code r. 335-3-14-.01 (1)(a) and (b) state:

- (a) Any person building, erecting, altering, or replacing any article, machine, equipment, or other contrivance, the use of which may cause the issuance of or an increase in the issuance of air contaminants or the use of which may eliminate or reduce or control the issuance of air contaminants, shall submit an application for an Air Permit at least 10 days prior to construction.
- (b) Before any article, machine, equipment, or other contrivance described in subparagraph (a) of this paragraph may be operated or used, authorization shall be obtained from the Director in the form of an Air Permit. No Permit shall be granted for any article, machine, equipment or contrivance described in subparagraph (a) of this paragraph, constructed or installed without notification as required by subparagraph (a) of this paragraph, until the information required is presented to the Director and such article, machine, equipment or contrivance is altered, if necessary, and made to conform to the standards established by the Department

15. In April 2009, the Permittee replaced the 530 HP natural gas refrigeration compressor engine with an un-permitted 215 HP natural gas refrigeration compressor engine. The 215 HP natural gas engine was installed and the Permittee began operating this engine prior to submitting an application for a permit to the Department. The Department was not made

aware that this exchange had taken place until sometime later. On July 2, 2009, the Department received a permit application for a 215 HP natural gas refrigeration compressor engine to replace the 530 HP natural gas engine.

16. On July 14, 2009, Permittee notified the Department that it would not be able to conduct the performance test on the 530 HP natural gas refrigeration compressor engine on July 17, 2009. Furthermore, Permittee further asserted that in April 2009, it replaced the 530 HP natural gas refrigeration compressor engine with a 215 HP natural gas refrigeration compressor engine and that the 530 HP natural gas engine was no longer available for testing.

17. On July 17, 2009, the Permittee did conduct testing on the 215 HP natural gas refrigeration compressor engine for NO_x and CO emissions.

18. The Permittee consents to abide by the terms of the following Order and to pay the civil penalty assessed herein.

19. The Department has agreed to the terms of this Order in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above alleged violations. The Department has determined that the terms contemplated in this Order are in the best interests of the citizens of Alabama.

CONTENTIONS

20. Pursuant to Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty.

Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following.

A. **SERIOUSNESS OF THE VIOLATIONS:** The Department considers the following violations by the Permittee to be serious:

(1) Failure to perform the required testing on the 530 HP natural gas engine; and

(2) Failure to submit a permit application for the 215 HP engine prior to it being installed and operated.

However, the Department is not aware of irreparable harm to the environment due to these violations.

B. **THE STANDARD OF CARE:** The Permittee did not exhibit a sufficient level of care by failing to conduct testing on the 530 HP engine and by failing to submit an application for the 215 HP engine prior to commencing its operation. In the March 26, 2006 warning letter, the Permittee was advised by the Department that failure to submit applications, as required, could result in further enforcement actions in the future.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** As a result of not incurring the costs associated with performing the required emissions test on the 530 HP natural gas engine in 2007 and by failing to timely submit a permit application for the 215 HP natural gas engine, the Permittee may have derived some economic benefit from these violations.

D. **EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT:** The Permittee subsequently took corrective actions towards

meeting its testing requirements by conducting testing on the 215 HP engine currently in operation to demonstrate compliance with the facility-wide permit limit. The Permittee also took corrective actions towards resolving permitting and compliance issues by hiring a consultant to manage the Facility on its behalf.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department issued the Permittee a warning letter on May 25, 2006 for issues related to installing units prior to submitting the required permit applications. The Department also issued an August 28, 2008 NOV and a February 23, 2009 Consent Order to the Permittee for failing to perform required testing, monitoring, and recordkeeping on another unit located at the Facility.

F. THE ABILITY TO PAY: The Permittee has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty it believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

ORDER

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee agree to enter into this ORDER with the following terms and conditions:

A. The Permittee agrees to pay to the Department a civil penalty in the amount of \$14,000.00 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. The Permittee agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

C. The Permittee agrees to comply with all requirements of ADEM Administrative Code div. 335-3 and the Permit immediately upon the effective date of this Order and continuing each and every day thereafter.

D. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

E. The parties agree that, subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations which are cited in this Consent Order.

F. The Permittee agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

G. For purposes of this Consent Order only, the Permittee agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. The Permittee also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

H. The Department and the Permittee agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the facility which would constitute possible violations not

addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and the Permittee shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

I. The Department and the Permittee agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same.

J. The Department and the Permittee agree that this Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

K. The Department and the Permittee agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

L. The Department and the Permittee agree that, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

M. The Department and the Permittee agree that any modifications of this Order must be agreed to in writing signed by both parties.

N. The Department and the Permittee agree that, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

MOCKINGBIRD GAS PLANT, LLC

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

(Signature of Authorized Representative)

Onis "Trey" Glenn, III
Director

(Printed Name)

(Printed Title)

Date Signed: _____

Date Executed: _____